

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Sep 13, 2021

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

FAVIOLA R.,

No. 2:20-CV-0330-JTR

v.

REPORT AND RECOMMENDATION
TO GRANT STIPULATED MOTION
FOR REMAND

KILOLO KIJAKAZI, ACTING
COMMISSIONER OF SOCIAL
SECURITY,¹

Defendant.

BEFORE THE COURT is the parties' stipulated motion to remand the above-captioned matter to the Commissioner for additional administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g).² ECF No. 17. Attorney Tom Cordell represents Plaintiff; Special Assistant United States Attorney L. Jamala Edwards represents Defendant. The parties have not consented to proceed before a magistrate judge. After considering the file and proposed order, **IT IS RECOMMENDED:**

1. The parties' Stipulated Motion for Remand, **ECF No. 17**, be **GRANTED**. The above-captioned case be **REVERSED** and **REMANDED** to the

¹Kilolo Kijakazi became the Acting Commissioner of Social Security on July 9, 2021. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Kilolo Kijakazi is substituted for Andrew M. Saul as the defendant in this suit. No further action need be taken to continue this suit. *See* 42 U.S.C. § 405(g).

²While the parties do not expressly indicate in their stipulation, the Court assumes the parties' motion to remand is pursuant to sentence four of 42 U.S.C. § 405(g).

1 Commissioner of Social Security for further administrative action pursuant to
2 sentence four of 42 U.S.C. § 405(g).

3 On remand, the Appeals Council will first determine whether the record
4 supports a finding of disability. If the case requires further development, the
5 Appeals Council will instruct the Administrative Law Judge (ALJ) to do the
6 following: (1) reevaluate the medical evidence of record; (2) reevaluate the
7 evidence of record concerning Plaintiff's symptom complaints; (3) reevaluate
8 Plaintiff's maximum physical and mental residual functional capacity as required
9 by Social Security Ruling 96-9p; (4) proceed with the remaining steps of the
10 sequential evaluation process; (5) make findings on whether Plaintiff is illiterate
11 and whether she meets the guidelines for disability; and (6) offer Plaintiff the
12 opportunity for a hearing, take any further action needed to complete the
13 administrative record, and issue a new decision.

14 2. **Judgment be entered for PLAINTIFF.**

15 3. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, be
16 **STRICKEN AS MOOT.**

17 4. An application for attorney fees and costs may be filed by separate
18 motion.

19 **OBJECTIONS**

20 Any party may object to a magistrate judge's proposed findings,
21 recommendations or report within fourteen (14) days following service with a copy
22 thereof. Such party shall file written objections with the Clerk of the Court and
23 serve objections on all parties, specifically identifying the portions to which
24 objection is being made, and the basis therefor. Any response to the objection
25 shall be filed within fourteen (14) days after receipt of the objection. Attention is
26 directed to FED. R. CIV. P. 6(d), which adds additional time after certain kinds of
27 service.

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1 A district judge will make a *de novo* determination of those portions to
2 which objection is made and may accept, reject, or modify the magistrate judge's
3 determination. The judge need not conduct a new hearing or hear arguments and
4 may consider the magistrate judge's record and make an independent
5 determination thereon. The judge may, but is not required to, accept or consider
6 additional evidence, or may recommit the matter to the magistrate judge with
7 instructions. *United States v. Howell*, 231 F.3d 615, 621 (9th Cir. 2000); 28 U.S.C.
8 § 636(b)(1)(B) and (C), FED. R. CIV. P. 72(b)(3); Local Magistrate Judge Rules for
9 the Eastern District of Washington Rule 2.

10 A magistrate judge's recommendation cannot be appealed to a court of
11 appeals; only the district judge's order or judgment can be appealed.

12 The District Court Executive is directed to file this Report and
13 Recommendation and provide copies to counsel.

14 DATED September 13, 2021.



A handwritten signature in black ink, appearing to be "M" or "Rodgers", is written above a horizontal line.

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE